

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DONALD L. MOSHIER, JR.

Plaintiff,

v.

UNITED STATES OF AMERICA,
et al.,

Defendants.

Civil Action No. 05-180 Erie

MEMORANDUM ORDER

_____Plaintiff's civil rights complaint was received by the Clerk of Court on June 10, 2005 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The magistrate judge's report and recommendation, filed on May 15, 2007 [40], recommended that the Defendants' partial motion to dismiss or, in the alternative, partial motion for summary judgment [24] be granted. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Plaintiff by certified mail at FCI Schuylkill, where he is incarcerated, and on the Defendants. No objections were filed; however, on May 30, 2007, Plaintiff filed a document entitled "Plaintiff's Rebuttal to Government's Response to his Civil Action Pursuant to Federal Rule of Civil P. Rule 7(b)" [41]. After de novo review of the complaint and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 11th Day of June, 2007;

IT IS HEREBY ORDERED that the Defendants' partial motion to dismiss or, in the alternative, partial motion for summary judgment [24] is GRANTED and the following claims are dismissed from the case:

1. Plaintiff's FTCA claims against the individual Defendants;
2. Plaintiff's FTCA claim against the United States alleging medical negligence regarding the treatment of his gallbladder problems and the growth on the side of his stomach; and

3. Plaintiff's Eighth Amendment Bivens claims against the individual Defendants.

As a result, the only claim still pending in this case is Plaintiff's FTCA claim against the United States alleging medical negligence relative to the treatment of his hepatitis C condition.

The report and recommendation of Magistrate Judge Baxter, dated May 15, 2007 [40], is adopted as the opinion of this Court.

s/ SEAN J. McLAUGHLIN

Sean J. McLaughlin
United States District Judge

cc: all parties of record
U.S. Magistrate Judge Baxter